



JOHN J. GIBBONS FELLOWSHIP IN
PUBLIC INTEREST & CONSTITUTIONAL LAW

HONORABLE JOHN J. GIBBONS

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January 25, 2013

Honorable Alvin K. Hellerstein
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, New York 10007-1312

Re: ACLU v. DOD, 04-cv-4151

Dear Judge Hellerstein:

At the status conference held by Your Honor on December 14, 2012, the parties agreed to provide the Court with a report as to the progress of this matter by today, January 25, 2013. We here do so.

First, with regard to the matter of attorney's fees, both the ACLU and Gibbons P.C. have now gathered the figures necessary for our fee request and we will, by next Thursday, January 31, 2013, provide those figures to the Government, along with a letter setting forth our position with regard to various of the issues that will require agreement or resolution by the Court in order to finalize the fee award. We apologize that this submission is a bit belated, due to the holidays and then the press of other work (including that the undersigned counsel has been in trial for the last few weeks). After it receives our letter, the Government will inform us as to how long it requires to review and respond to it and we will provide a more definitive schedule to the Court for the negotiation of any outstanding issues and the submission of disputes for resolution by the Court, if that becomes necessary.

Second, we have proposed to the Government an initial briefing schedule for the one remaining legal issue in the case, which, as discussed at the December 14 status conference, has to do with our objections to the Government's continued withholding of photographs depicting the abuse of detainees. Over three years ago, the Court allowed the government to withhold those photographs based in significant part on the context of the passage of the Protected National Security Documents Act. The Court understood that statute's enactment to reflect the view of the President and Congress that releasing the photographs at that time would endanger the national security. Many years have passed, however, and that context, so obviously relevant to the Court's reasoning, has changed. Plaintiffs therefore propose to move the Court again to require the Government to explain the Secretary's certification of harm through the typical FOIA

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process of a Vaughn index of the photographs accompanied by a declaration explaining the Secretary's determination that releasing each photo (or particular categories of photos) would cause harm. The parties have begun to work out a briefing schedule for the expeditious resolution of this issue, and hope to be able to report to the Court with regard to that issue within two (2) weeks.

We hope that this schedule is satisfactory to the Court and thank Your Honor, as always, for your kind consideration of this matter.

Respectfully submitted,

/s/

Lawrence S. Lustberg
Director

cc: Michael Byars, Esq. (via email)
Alex Abdo, Esq. (via email)